

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL TEKLEMARIAM  
HAGOS,

Plaintiff,

v.

MAHALIA KAHSAY, et al.,

Defendants.

CASE NO. C23-0251JLR

ORDER ADOPTING REPORT  
AND RECOMMENDATION

Before the court is Magistrate Judge David W. Christel's report and recommendation (R&R (Dkt. # 5)), in which Magistrate Judge Christel recommends that the court (1) dismiss *pro se* Plaintiff Daniel Teklemariam Hagos's 42 U.S.C. § 1983 civil rights complaint without leave to amend (Compl. (Dkt. # 1-1)) and (2) count the dismissal as a "strike" under 28 U.S.C. § 1915(g). After Magistrate Judge Christel issued the report and recommendation, and before the deadline to file objections, Mr. Hagos filed two documents, which the court construes together as constituting Mr. Hagos's

1 objections to the report and recommendation. (*See* 4/3/23 Misc. Doc. (Dkt. # 6); 4/7/23  
2 Misc. Doc. (Dkt. # 7).) Having carefully reviewed the foregoing documents, the relevant  
3 portions of the record, and the governing law, the court ADOPTS the report and  
4 recommendation in its entirety; DENIES Mr. Hagos's objections; DISMISSES Mr.  
5 Hagos's civil rights complaint; and DEEMS this dismissal a "strike" under 28 U.S.C.  
6 § 1915(g).

7 A district court has jurisdiction to review a Magistrate Judge's report and  
8 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court  
9 may accept, reject, or modify, in whole or in part, the findings or recommendations made  
10 by the magistrate judge." 28 U.S.C. § 636(b)(1). "The statute makes it clear that the  
11 district judge must review the magistrate judge's findings and recommendations de novo  
12 if objection is made, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114,  
13 1121 (9th Cir. 2003) (en banc). Because Mr. Hagos is proceeding *pro se*, the court must  
14 interpret his complaint and objections liberally. *See Bernhardt v. Los Angeles Cnty.*, 339  
15 F.3d 920, 925 (9th Cir. 2003).

16 Magistrate Judge Christel recommends that the court dismiss Mr. Hagos's  
17 complaint because the three Defendants named in that complaint are not subject to suit  
18 under Section 1983. (R&R at 3-5.) Specifically, Magistrate Judge Christel recommends  
19 that the court dismiss the complaint because (1) Defendant Mahalia Kahsay, Mr. Hagos's  
20 court-appointed defense attorney, is not a state actor within the meaning of Section 1983;  
21 (2) Defendant Owen Lesesne, a King County Deputy Prosecutor, is entitled to  
22 prosecutorial immunity; and (3) Defendant the State of Washington has not waived its

1 sovereign immunity rights under the Eleventh Amendment to the United States  
2 Constitution. (*Id.*) Magistrate Judge Christel also recommends that the court deny leave  
3 to amend on the basis of futility because nothing Mr. Hagos could allege in an amended  
4 complaint can cure these deficiencies. (*Id.* at 5.) Finally, Magistrate Judge Christel  
5 recommends that the dismissal count as a “strike” under 28 U.S.C. § 1915(g), which  
6 provides that a prisoner shall not, except in cases of “imminent danger of serious physical  
7 injury,” bring a civil action if he or she has, while detained, brought three or more prior  
8 suits that were dismissed as frivolous, as malicious, or for failure to state a claim. (*Id.*);  
9 28 U.S.C. § 1915(g).

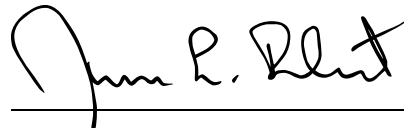
10 Mr. Hagos does not directly object to Magistrate Judge Christel’s recommendation  
11 that the court conclude that Defendants are not subject to suit under Section 1983. (*See*  
12 4/3/23 Misc. Doc.; 4/7/23 Misc. Doc.) Nevertheless, the court has reviewed Magistrate  
13 Judge Christel’s report and recommendation de novo. *See Reyna-Tapia*, 328 F.3d at  
14 1121. Having done so, the court agrees, for the reasons set forth in the report and  
15 recommendation, that Mr. Hagos has failed to state a claim upon which relief can be  
16 granted and that amendment of the complaint would be futile. Accordingly, the court  
17 ORDERS as follows:

- 18 1. The court ADOPTS the report and recommendation (Dkt. # 5) in its  
19 entirety;
- 20 2. Mr. Hagos’s complaint (Dkt. # 1-1) is DISMISSED without prejudice and  
21 without leave to amend;
- 22 3. This dismissal counts as a “strike” under 28 U.S.C. § 1915(g); and

1           4.     Mr. Hagos's application to proceed in forma pauperis (IFP App. (Dkt. # 1))  
2 is DENIED as moot.

3           The Clerk is DIRECTED to send copies of this order to Mr. Hagos and to  
4 Magistrate Judge Christel.

5           Dated this 21st day of April, 2023.

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8 JAMES L. ROBART  
9 United States District Judge  
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